

LAND USE COMMISSION
MINUTES OF MEETING

February 17, 2006

Kapalua Bay Hotel
1 Bay Drive
Kapalua, Maui, Hawaii

COMMISSIONERS PRESENT: Thomas Contrades
Michael Formby
Duane Kanuha
Steven Montgomery
Ransom Piltz
Randall Sakumoto

COMMISSIONERS ABSENT: Kyong-su Im
Lisa Judge (recused)

STAFF PRESENT: Diane Erickson, Deputy Attorney General
Anthony Ching, Executive Officer
Bert Saruwatari, Staff Planner
Sandra Matsushima, Chief Clerk
Holly Hackett, Court Reporter
Wade Kersey, Audio Technician

Chair Sakumoto called the meeting to order at 8:40 a.m.

DR04-30 KULEANA KU`IKAHI LLC (Maui)

Chair Sakumoto stated that this was an action meeting on DR04-30 Kuleana Ku`ikahi LLC (Maui) to consider the Exceptions to the Hearings Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed by the petitioner, intervenors, and the County of Maui.

APPEARANCES

Richard McCarty, Esq., represented Kuleana Ku`ikahi, LLC

Blaine Kobayashi, Esq., represented Intervenor R. Charles Bergsen, et al

James Geiger, Esq., represented Intervenor Kauaula Land Company

Paul Horikawa, Esq., represented Intervenor Jason and Concetta Cuevas

Jane Lovell, Deputy Corporation Counsel, represented County of Maui, Dept. of Planning

Gregg Kinkley, Deputy Attorney General, represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Chair Sakumoto commented that the LUC has circulated a copy of the hearing officer's proposed findings of fact, conclusions of law, and decision and order to the parties. By circulating the document and asking the parties to file exemptions effectively, the LUC has treated the hearing officer's recommended order as their own proposed order. By filing exceptions, the parties have likewise treated the hearing officer's findings as that of the LUC. Chair Sakumoto asked if there were any objections to the procedures. The parties had no objections.

Chair Sakumoto noted that there were no public witnesses.

Chair Sakumoto then polled the Commissioners individually on their readiness and qualifications to deliberate on this matter and that each member has reviewed the transcript, exhibits and proposed orders and exceptions in this docket and were prepared to participate in the deliberations.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Formby, Contrades, Kanuha, Montgomery, and Sakumoto.

Chair Sakumoto briefly described the options. First, after receiving the staff's report, the LUC may conclude that this set of findings is all that is necessary for the LUC to act upon. The LUC will then review the conclusions of law and conclude deliberations. Second option is to hear the staff's review of the exceptions filed by the parties, then modify the hearing officer's proposed order. After compiling a set of findings, the LUC will develop an appropriate set of conclusions of law. The third option is that the LUC may conclude that there is a need to re-open the proceedings in order that the record be supplemented in

specific areas. The matter may remand back to the hearing officer with LUC's instructions or to have the LUC create its own record and hear this matter themselves.

Chair Sakumoto also noted that he has asked the Executive Officer to ascertain that the findings basically fall into 3 categories. First is that the findings are relevant to the order issued by the LUC on December 14, 2004. The question was whether the present and proposed uses of agricultural lands are not in conformity with and are in direct violation of the applicable state laws, rules or regulations pertaining to the use of agricultural lands and subdivisions. Also, that a hearing shall be set on issue no. 5 only upon an affirmative finding of issue no. 1. Second, is that the findings need to be supported by the record. Third, the findings need to be necessary in order to reach a conclusion of law.

Mr. Ching then provided a chronology of the docket to date and referred to the procedural findings created by the hearing officer. Mr. Ching provided a PowerPoint presentation that verified the findings of facts recommended by the hearing officer with the transcripts of the hearings.

Mr. Ching provided the definition of the terms enforcement, policy, and implementation as defined in the Webster's Dictionary.

Chair Sakumoto commented that these distinctions were important to understand that the issue of enforcement was issue no. 5, which the hearing officer would not address unless it was affirmative in finding of issue no. 1, as written in the LUC order.

Mr. Ching discussed and reviewed the hearing officer's findings of fact 61, 64, 66, 67, 71, 73, 75, 84, 85, 95, 104, 108, and 97 to 110.

Mr. Ching noted that his charge did not extend to the conclusions of law but did update the citation of 205-4.5 within conclusions of law 5, 8, 9, 10, 11, 12, 13. Mr. Ching also noted that careful examination and determination of the hearing officer's findings of fact, he did not attempt to deal with the conclusions of law and decision and order.

Chair Sakumoto stated that one option is to accept the changes that the Executive Officer has noted after he has been able to verify the findings of fact and then proceed to reaching the conclusions of law and decision and order if the Commission feels appropriate. Chair Sakumoto added that if the Commission

feels that they can proceed on that basis alone, then that would be without actual consideration of the exceptions. Chair Sakumoto entertained a motion at this time.

Commissioner Formby commented that he has reviewed the exceptions filed by the parties and has reviewed the documents and his preference is that the Commission also review the staff's review of the findings of fact based upon the exceptions filed by the parties.

Commissioner Kanuha seconded the motion. The motion was approved by voice votes.

Chair Sakumoto stated that the Commission will now proceed with a review of the exceptions filed by each of the parties.

Mr. Ching provided a PowerPoint presentation of the staff's report that verified the findings of fact with the exceptions filed by the parties.

A recess break was taken at 9:25 a.m. The meeting reconvened at 9:45 a.m.

Mr. Ching continued with the analysis of the parties' proposed exceptions. Mr. Ching noted that staff has tried to fit in the concept as best they could supported by the citations given to fit the facts within the existing finding. Also, staff did include some editing notes to not change the substance but recreate the facts as described in the transcripts.

Commissioner Piltz made a disclosure that upon review of the documents, Mr. Kikuchi was named and that Mr. Kikuchi had recently moved into his neighborhood. Also, about 4 months ago, Commissioner Piltz met him for the first time at a social event and no information on this particular matter was ever mentioned or discussed. Commissioner Piltz also noted that he has no financial interest with him or the others, just that Mr. Kikuchi is a neighbor and that he has met him once. Commissioner Piltz added that meeting Mr. Kikuchi would not affect his decision on this matter and that the one meeting was a social event.

Chair Sakumoto asked the parties if they had any objections to Commissioner Piltz continued participation in this matter based upon his disclosure.

Mr. McCarty asked if this is a club that meets regularly with an ongoing relationship.

Commissioner Piltz replied that he is in a cigar club that Mr. Kikuchi attended as someone's guest and until that meeting, he did not know that he was also a neighbor.

There were no objections by the parties and Commissioner Piltz was qualified to continue on in this matter.

Mr. Ching commented that he was completed with staff's analysis of exceptions filed by the parties and noted that the analysis was limited to only the findings and not of the conclusions.

Vice Chair Montgomery raised questions related to the County's policy on required farm plans.

Mr. Ching referenced findings of fact 107 that owners were required to have a farm plan approved prior to their first application for a building permit. Mr. Ching also referenced findings of fact 64 relating to the allowance of 3 structures at the same time in contravention to the policy of issuing only one building permit at a time. Findings of Fact 108 notes that the farm plan process implemented by the Planning Department has not been adopted as an admin rule and is not part of the Maui County Code.

Vice Chair Montgomery commented that it was his understanding that there was not a statutory basis for farm plans but farm plans have been requested and filed with the Bureau of Conveyances and inspection as a functioning process even though it has not been adopted as an admin rule.

Chair Sakumoto noted that the Commission has reviewed the proposed findings of facts against the record created by the hearing officer and that the Commission cannot go beyond that scope. The Commission first looked at the hearing officer's proposed findings of fact and tried to determine whether it was based on the record created before her. Secondly, the Commission reviewed the exceptions to the hearing officer's findings of fact and exceptions filed by the parties. The process that the Commission is going through is to create a set of findings, then to create a conclusions of law. The Commission will not go outside of the record and will limit their questions only to the record. The Commission was provided with verbatim transcript as well as all the exhibits.

Chair Sakumoto requested that the members please reference the record whenever they ask questions or to make amendments.

Chair Sakumoto commented that findings of fact 105 may be relevant to the question that Vice Chair Montgomery just raised.

Commissioner Formby concurred with Chair Sakumoto and noted that the comments made by staff are not part of the record and will not affect the decision of the Commission today.

Mr. Ching continued to discuss findings of fact 38, 39, and 64.

Chair Sakumoto suggested that there is a number of issues focused on various lots in Puunoa 1 and 2 and where possible, they should try to be more specific to the lot numbers especially if there are other references to the property which limit the finding to the specific lot.

Chair Sakumoto commented that based upon the scope of the proceedings, he believed that findings of fact 97 through 110 entitled Maui County Regulation of Agricultural Subdivisions should not be included in the document.

Commissioner Formby commented that the Commission did not allow the hearing officer to bifurcate the hearing and if she did not find affirmative issues to number 1, then it would not proceed to number 5.

Chair Sakumoto stated that the point is whether evidence was accepted with issue number 5 or whether the hearing officer ruled that the evidence on issue number 5 was accepted only after issue number 1 was addressed. Chair Sakumoto noted that his concern was what the hearing officer did at the hearing and if the Executive Officer could address that.

Mr. Ching responded that he perceived it to be a factual item and his recollection was that the hearing officer specifically ruled that items relating to issue number 5 would not be heard, however, that she allowed cross examination by Petitioner as it related to findings of fact 64, the cross examination by McCarty of Mr. Foley, a question of policy raised on items related to the County policy regarding farm dwellings on agricultural lots was also discussed.

Chair Sakumoto commented that his understanding of the record was that written testimony and other documents were not rejected but not considered unless there was an affirmative finding of issue number 1. Certain things were allowed in the record but were not considered. In a discussion with the County, the hearing officer said that they were only dealing with the first issue and based on that the parties proceeded at the hearing without the need to establish the record on issue number 5. Chair Sakumoto added that he actually believed that those findings were inappropriate for this particular document.

Mr. Ching commented that his charge, with respect to the findings, did note the exceptions filed specifically with those findings were facts in evidence in this record. Any further interpretation was not done. All he did was verify that those facts were supported by the record and deferred to the LUC for any discussion.

Chair Sakumoto commented that the findings do not include all the facts, just the irrelevant facts, and the transcripts have all the facts.

Commissioner Formby commented that he believed that it was something that was entered into the record and the parties taken into consideration. By commenting that it is not relevant to this proceeding, it may not be proper to eliminate facts before getting to the conclusion that it is not relevant.

Commissioner Kanuha commented that it was clear to him in the early stages of giving direction that issue number 5 would only be addressed if issue number 1 was in the affirmative. Commissioner Kanuha concurred with Commissioner Formby.

Chair Sakumoto noted he was not trying to pre-judge this by excluding these facts from the document. Chair Sakumoto added that his comment was based solely upon the instruction that the hearing officer gave the parties and what they understood to be the scope of the proceeding. Chair Sakumoto added that he was not suggesting that the outcome be one way or the other. The Commission can return to this discussion to address the exclusion or inclusion at a latter point.

Commissioner Formby commented that the Commission did not allow the hearing officer to bifurcate the hearing and that the hearing officer allowed the policy of the County to come into the record. Commissioner Formby added that

he believes it is appropriate to leave it in the record and to deal with it in the conclusions of law.

Commissioner Piltz agreed with Commissioner Formby that these should remain in the record and when the LUC makes a decision that they note that their decision was not based on that particular section.

Commissioner Formby stated that he had a chance to look at the transcript specifically with respect to the hearing officer's language on the issue of "irrelevance" and proposed to use the words "outside the scope" which was the language from the transcripts, since that is the words the hearing officer used in the hearing.

Mr. Ching made the changes to paragraphs a, b, c. and d as directed.

Chair Sakumoto entertained a motion for an executive session with counsel to discuss the issue of bifurcation.

EXECUTIVE SESSION

Commissioner Kanuha moved to go into executive session under §92-5(a)(4), Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Commissioner Piltz seconded the motion. Said motion was unanimously approved by voice votes.

The Commission entered into executive session at 10:45 a.m.

The open meeting reconvened at 11:15 a.m.

Commissioner Formby commented that he appreciated the advice of counsel on the bifurcation issue. Commissioner Formby noted that upon reviewing the transcript, he believes that the Commission discussed the issues with respect to issue no. 5 that the procedure and process of the hearing would be that evidence would be presented into the record at one time and that there would be no bifurcation of issues. He added that paragraphs 97 through 110 notes that the hearing officer accepted into the record how the county implemented its policy and not the history of the enforcement action taken by the county. Commissioner Formby commented that he believes that the history

of enforcement action would be in the scope outside the record so these findings did not violate the instructions given to the hearing officer.

Chair Sakumoto noted that he would withdraw the request that those provisions be taken out of the record but some consideration be given upon the conclusions of law based upon the exceptions reviewed by the executive officer.

Commissioner Kanuha noted that where a finding provides a specific reference to a lot or property, such as finding 43 describes the Puunoa Phase 1 and 2 subdivisions as the "Property". To avoid confusing the facts in other findings where the reference to the property is to a specific lot, perhaps that specific lot number should be given instead of referring to it as the Property.

Chair Sakumoto added that the term "Property" is used to mean Phase 1 and 2 at Pu`unoa and elsewhere the word property (in lower case) does not refer back to a specific lot. After a brief discussion on the example of the Cuevas' property, Chair Sakumoto suggested the addition of a finding based on the written testimony of Jason Cuevas to reference the Pu`unoa subdivision declaration of permitted uses.

Chair Sakumoto continued with the conclusions of law contained on page 23 to 26 of the hearing officer's document.

Commissioner Formby stated that he has reviewed the proposed conclusions of law as drafted by the hearing officer and proposed to delete conclusions of law 11, 13, 15, 16, 17, 18, 19 and to change the number sequence.

Commissioner Kanuha discussed the proposed conclusions of law 14, or new conclusion of law 12, regarding the sentence that reads "Hawaii Supreme Court has not yet interpreted this statutory requirement" and commented that there is still some pending interpretation that has not been determined.

Chair Sakumoto commented that the reference goes back to farm dwelling as defined in HRS 205 that has not yet been determined by the Supreme Court. After a brief discussion, Chair Sakumoto noted that his preference would be to leave it in the document because it sets forth that as of the date of this decision, the LUC has the guidance of the current statute.

The LUC then discussed the decision and order. After a discussion, Chair Sakumoto commented that staff will make the normal formatting changes and

reformat the order as that of the Commission and noted that the last sentence in the decision and order is now item number 13 of the conclusions of law.

Mr. Ching replied in the affirmative and added that as other formatting and change in the numbering as items are deleted or added, paragraphs would be renumbered and the other standard provisions.

Chair Sakumoto then entertained a motion to adopt the hearing officer's proposed findings of fact as modified by their discussion.

Commissioner Piltz moved to adopt the hearing officer's proposed findings of fact as modified by the Commission's discussion. The motion was seconded by Commissioner Kanuha.

The Commission was polled as follows:

Ayes: Commissioners Piltz, Kanuha, Formby, Im, Montgomery, and Sakumoto.

The motion passed with 6 ayes, 1 recused, 1 absent.

Chair Sakumoto directed staff to prepare the order for adoption at a later date.

A lunch break was taken at 12:00 p.m. The meeting reconvened at 12:50 p.m.

DOCKET NO. A04-751 MAUI LAND & PINEAPPLE COMPANY, INC. (Maui)
PULELEHUA

Chair Sakumoto stated that this was a continued hearing on Docket No. A04-751 Maui Land & Pineapple Company, Inc. – Pulelehua for the reclassification of approximately 310.437 acres of land currently in the Agricultural District to the Urban District at Mahinahina, West Maui, Hawaii for multi- and single-family residential homes and retail commercial spaces.

APPEARANCES

William Yuen, Esq., representing Petitioner

Robert McNatt, Executive Vice President, Maui Land & Pineapple Company

Jane Lovell, Esq., represented the County of Maui Department of Planning

Michael Foley, Director, County of Maui Department of Planning

Ann Kua, County of Maui Department of Planning

Gregg Kinkley, Esq., represented State Office of Planning

Laura Thielen, Director, State Office of Planning

Abe Mitsuda, State Office of Planning

Admission of Additional Exhibits

Mr. Kinkley stated that they have submitted an amended list of witnesses and list of exhibits, and the addition of exhibit 9 relating to aircraft operation. Mr. Kinkley noted that they have decided to rescind exhibit 10 and offered only exhibit 9 to the record. There were no objections by the parties. Said exhibit was admitted into evidence.

State's Witness

1. Brennon Morioka

Mr. Morioka stated that he is the Deputy Director for the Department of Transportation, Highways Division and oversees the areas of highways particularly in policy.

Mr. Morioka enlightened the LUC on plans for the bypass and discussed the three phases of the bypass along Honoapiilani Highway. Mr. Morioka noted that estimated timelines for phase 1a, 1b, and 1c is anticipated to start in early 2007 and will take approximately 2 to 3 years of construction.

Mr. Morioka also noted that the timing of the bypass is a concern and reflects something that can be worked out with Pulelehua consultants. There needs to be some right of way dedication on the north end of the property, referred to as the third access or South Street. Mr. Morioka stated that there are also safety and transition issues to be addressed so as to ensure safe access into Pulelehua near South Street. Mr. Morioka also discussed the availability of

particular funding sources, public private partnerships, and state and federal highway funds.

Mr. Morioka noted that this project has proposed numerous access points along the state highway and is a big concern when housing and transportation is entwined. Mr. Morioka noted that it is critical to coordinate communication during the planning phases, especially since they do not have circulation in West Maui. The state's philosophy is to manage regional circulation and try to limit as many access points to the freeways or highways. Mr. Morioka added that they do not allow new access points because access points are friction points in circulation. Initially, the Petitioner came in with a number of access points and for various reasons that the state did not support. Mr. Morioka stated that they have considered allowing three access points and may allow for a fourth. Mr. Morioka added that they are currently working on the bypass metes and bounds and unsure of the precise locations of these access points until further discussion with MLP in finding the most appropriate and safest access. MLP was asked to have a traffic study and to look at the various scenarios.

Mr. Morioka commented that the Honoapiilani Highway is classified as a minor arterial because there are some stubs going out on the southern most part. The internal circulation purpose is to take people from region to region and to stay off the highway through surface streets on parallel roads appropriately designed in circulation patterns.

Mr. Morioka also discussed the elementary school and commented that the developer is able to provide routes to the school keeping the students and traffic off the highway is an ideal situation for congestion relief and also provides for additional bike and pedestrian access throughout the project mauka of the highway.

Mr. Yuen posed a few questions regarding obtaining assistance from public private partnerships and the approximate amount per unit for funding of regional improvements.

Ms. Lovell asked Mr. Morioka to briefly summarize his education and employment background. Ms. Lovell commented on the testimony provided by the Maui fire and police departments who both indicated that their preferences were for more access points versus fewer access points. Ms. Lovell raised questions regarding the county's entitlement process being held up and awaiting for response from the DOT.

Mr. Morioka stated that they have not responded to the County because the final TIAR document has not been completed by the consultant or MLP and the DOT is not able to use the traffic report in the EIS because from the point of the EIS until the final development plan many of the concepts change. Mr. Morioka added that they will be glad to meet with the County at any time, but will not give an official position until they know what these conditions will be. Mr. Morioka added that this leads the county to taking one position and the state taking a different position, but from the very beginning, the DOT has always opposed multiple accesses and that has not changed. There is already an existing access called the North Road, Akahele Street, and the third is what they call South Street.

Mr. Morioka noted that at this point the department would not approve the access to the school and consider that a safety hazard.

Mr. Yuen asked if the department had asked MLP for land at the proposed north end of the bypass road. Mr. Morioka replied that he did not know this.

Commissioner Formby clarified the three access points that the state is supporting.

Mr. Morioka described the first access as the road to the airport, the second is the existing access referred to as the North Road and the third is being discussed as the South Road. The fourth access could possibly be above the recreation field. The department will not allow an access to the elementary school.

Commissioner Piltz commented that according to exhibit 4, the North Road is shown as a proposed access.

Mr. Morioka replied that it currently does not physically exist and added that the access exists only as a land court document.

Vice Chair Montgomery commented that hearing Mr. Morioka's testimony regarding federal rules for funding, the number of years it takes to build the roads, and previous testimony indicating that this was the right project at the wrong time and asked if this is a right time to approve a development that would add so many more people on the roads.

Mr. Morioka stated that by the time of full build out, Pulelehua to Maalae will have a secondary route. Mr. Morioka added that they are looking at approximately 7 to 8 years to have completed phase 1 which would bypass Lahaina town. Federal funding is on line and believes that the local funds will be there when it is time to ask for it and are ready for the growth.

Chair Sakumoto questioned if any portion of the bypass will be usable before the full build out.

Mr. Morioka replied in the affirmative and added that every phase will be usable and there are lands that need to be acquired, such as at Kaanapali who has already subdivided the parcel and will dedicate it to the state.

After a discussion there were no further questions posed by the Commission.

A recess break was taken at 2:00 p.m. the Meeting reconvened at 2:15 p.m.

2. Brian Sekiguchi

Mr. Sekiguchi stated that he is the Deputy Director for the Department of Transportation's Airports Division that oversees all six islands. Mr. Sekiguchi provided a brief summary of his educational and experience in engineering.

Mr. Sekiguchi discussed the history of the Kapalua Airport and the safety concerns of the department, operating hours, and the concerns of the runway area. Mr. Sekiguchi added that they have met with MLP to ensure that access to Kapalua Airport is maintained and that a street plan and traffic control plan be submitted prior to construction.

Mr. Yuen referenced petitioner's exhibits 46 to 51 and discussed exhibit 46 with Mr. Sekiguchi.

Admission of Additional Exhibits

Mr. Yuen described exhibits 46 through 51 and offered said exhibits into the record.

Ms. Lovell commented that the County did not have any objections to the exhibits, except for exhibit 50.

Mr. Kinkley echoed Ms. Lovell's comment and noted that the State did not have any objections to these exhibits.

Mr. Yuen then offered Petitioner's exhibits 46 through 49, and 51 into the record. Mr. Yuen noted that exhibit 50 would not be admitted at this time. There were no objections by the parties. Said exhibits were admitted into evidence.

Mr. Sekiguchi continued to discuss exhibit 46 and the MOU and added that they have provided input to the department who is consolidating the response and comments are forthcoming. Mr. Sekiguchi also referenced exhibit 47 and discussed the obstruction that the FAA is concerned about that the runway zone is not built in a certain height for adequate landing and take offs. Mr. Sekiguchi also discussed the grading along the mauka side of the runway, the insufficient slope of the grade to qualify for FAA standards, DOT mitigation measures, improvements, and the state's proposed condition to meet FAA standards.

Ms. Lovell posed questions relative to the testimony of the County Parks and Recreation director regarding the desire to acquire lands mauka of the airport and asked if the public would be able to access that area.

Mr. Sekiguchi commented that it was not uncommon for airports to have parks nearby and that safety is the primary concern. Mr. Sekiguchi added that their mandate is that the access does not impede the airport operations. Mr. Sekiguchi added that he does not believe that the DOT would have an issue about a nearby park, but commented that all residents near airports must deal with noise and what it does to neighboring areas.

Vice Chair Montgomery asked if this airport will allow tour helicopters in and out of the airport.

Mr. Sekiguchi replied that helicopters are restricted and believe that these restrictions were placed due to concerns of the noise helicopters bring and added that only day operations and the certain types of aircraft are allowed.

Commissioner Formby asked if the State has the authority to limit operations independent of the FAA.

Mr. Sekiguchi explained that the charter is mandated and that Kapalua is unique because the State has not utilized any federal funds at Kapalua so the federal cannot limit activities there.

Chair Sakumoto noted that there was someone video taping the proceedings and cited HRS section 92-9 which provides that a meeting of a board may be recorded by any person in attendance by means of a tape recorder or another means of sonic reproduction except when the meeting is closed pursuant to Section 92-4. Chair Sakumoto also noted that the videotape does not constitute an official record of this meeting as the court reporter is taking the only official record.

Chair Sakumoto asked for the number of airlines that utilize the airport and if any of them had concerns regarding the development of this project. Chair Sakumoto also asked if the airlines were required to indemnify the State in the event of an emergency and also asked if the airlines are required to provide some insurance when they land at the airport.

Mr. Sekiguchi stated that currently there are 12 to 14 flights a day and the restriction is up to 70 flights a day. Mr. Sekiguchi added that although the airlines have not commented to the DOT, he believes that the pilots may be concerned. Regarding emergencies, Mr. Sekiguchi was not sure if the airline is required to take responsibility contractually for any liability. Mr. Sekiguchi added that the Kapalua Airport has no control towers and the airlines are responsible for their operations. Mr. Sekiguchi noted that the carriers are required to have an agreement and liability insurance is a part of that agreement, although he was unsure on the amounts.

Mr. Kinkley noted that he would try to get more information on the liability issues and report back to the Commission.

After a discussion, there were no further questions posed by the Commission.

3. Edwin Sakoda

Mr. Sakoda stated that he was the Chief of Stream Protection Management Branch, State of Hawaii. Mr. Sakoda commented that he was familiar with

Petitioner's possible plans and options for water in the proposed project and discussed the three options. 1) Petitioner would use surface water and work with the county treatment plant; 2) Petitioner would build their own plant; and 3) utilize wells.

Mr. Sakoda also discussed utilizing water from the existing ditch system, additional water diversion to meet their demand, a permitting process, commission approval, amendment to the in stream flow standard, drilling wells, pump construction permit from the commission, well construction standards, and water use reports.

Ms. Lovell had a few questions related to contamination into the aquifers, well construction permit process, and the DOH safe drinking water standards.

After a brief discussion, there were no further questions posed by the parties.

The meeting adjourned at 2:55 p.m.

(Please refer to LUC Transcript of February 17, 2006 for more details on this matter.)